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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 SECURITIES AND EXCHANGE COMMISSION,

Case No. C-07-3798 JW

14 Plaintiff,

15 v.

**STIPULATION AND PROPOSED
PROTECTIVE ORDER PURSUANT TO
RULE 26(f)**

16 KENNETH L. SCHROEDER,

17 Defendant.
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20 Plaintiff Securities and Exchange Commission (the "Commission") and defendant Kenneth L.
21 Schroeder (collectively, "the parties"), by and through their respective counsel, hereby agree and
22 stipulate as follows:
23

24 **STIPULATION**

25 1. In keeping with Federal Rule of Civil Procedure 26, the parties agree that an order
26 regarding claims of privilege or of protection as trial-preparation material asserted after production
27 will facilitate the expeditious delivery of documents and other information, while protecting
28 legitimate rights and confidences.

1 2. The parties therefore agree that the following terms should be ordered:

- 2 a. The parties agree that the inadvertent disclosure of materials over which a
3 party to this action may assert any valid claim of privilege, including as trial
4 preparation material or work-product, will not by itself constitute a waiver of
5 such privileges or protections.
- 6 b. Whenever any producing party discovers, through review of the material,
7 notice from another party, or otherwise, that the party has inadvertently
8 produced material over which the party claims a privilege, or protections as
9 trial preparation material or work-product, the producing party shall
10 immediately notify all persons to whom the material was produced of the
11 inadvertent disclosure, by: providing a reasonable means for the notified
12 persons to locate the material (by bates number, date, or other description); and
13 describing the nature of the privilege or other protection asserted.
- 14 c. Whenever any receiving party learns, through review of the material, notice
15 from another party, or otherwise, that materials which reasonably appear to be
16 subject to protections under a claim of privilege, or as trial preparation material
17 or work-product, have been inadvertently produced by another party, the party
18 receiving the material will refrain from examining the materials any more than
19 is essential to ascertain if the materials are privileged, and shall immediately
20 notify the producing party that the receiving party possesses material that
21 appears to be privileged or subject to such other protections. If, upon such
22 notification, the producing party asserts a privilege or protection, the receiving
23 party shall destroy all materials and all copies and shall promptly deliver a
24 certification from counsel attesting to such destruction. The receiving party
25 further shall not use or disclose information derived from such materials.
26 Additionally, the receiving party shall notify the producing party whether any
27 materials or copies, or any information derived therefrom, have or may have
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1 been reproduced to any other persons and shall promptly take reasonable steps
2 to retrieve the materials, copies and information from all such persons.

3 d. In order for any inadvertent disclosure to constitute a waiver, the receiving
4 party must have changed his position by incorporating the material into his
5 trial preparation in reasonable reliance on the non-privileged or non-protected
6 nature of the document.

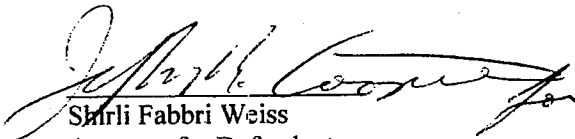
7 e. All disputes concerning whether material is privileged or otherwise protected
8 or concerning any other provision of this Stipulation shall be resolved in
9 accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

10 IT IS SO STIPULATED.

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12 DATED: September 17, 2007

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15 Judith L. Anderson
16 Attorney for Plaintiff
17 SECURITIES AND EXCHANGE COMMISSION

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19 DATED: September 17th, 2007

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22 Shirli Fabbri Weiss
23 Attorney for Defendant
24 KENNETH L. SCHROEDER
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ORDER

The Court having received the stipulation of the parties and finding good cause, **IT IS SO ORDERED.**

DATED:

James Ware
UNITED STATES DISTRICT JUDGE